

## DEVELOPMENT OF NEW RULES CONCERNING THE ENVIRONMENTAL STEWARDSHIP PROGRAM AND COMPREHENSIVE LOCAL ENVIRONMENTAL ACTION NETWORK

LSA Document #05-234(SWMB)

### Overview

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for a new article at 329 IAC 18 concerning two voluntary performance based leadership programs. The Environmental Stewardship Program (ESP) and Comprehensive Local Environmental Action Network (CLEAN) are new Indiana programs that offer recognition and incentives for companies and units of local government that consistently demonstrate environmental stewardship and strive for continual environmental improvement initiatives in Indiana's environmental programs. The proposed rule is to be presented to the Solid Waste Management Board (board) on January 16, 2007, for consideration of final adoption.

### Citations Affected

This rulemaking adds 329 IAC 18.

### Affected Persons

This rulemaking establishes voluntary programs to which no entity is required to be a participant. The entities that choose to apply for admission into the programs must consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health.

### Reason(s) for the Rule

The Environmental Stewardship Program (ESP) for businesses and the Comprehensive Local Environmental Action Network (CLEAN) for units of local government are similar to the United States Environmental Protection Agency's National Environmental Performance Track Program (NEPT) in that these state programs are designed to achieve environmental results by recognizing innovation, motivating organizations to work toward environmental improvements, and complementing existing regulatory activities. These programs focus on environmental outcomes such as reduced emissions, reduced waste, and lower discharges.

Performance based leadership programs combine elements such as environmental management systems, a history of regulatory compliance, and continuous environmental improvement projects to create a solid program that yields environmental benefits.

### Economic Impact of the Rule

Because this rule is for voluntary programs, there will be no requirements with a fiscal impact. However, members taking advantage of the programs could see reduced costs from some of the potential incentives. For example, the reduction of reporting requirements such as the NPDES discharge monitoring report form for wastewater dischargers is likely to result in time and money savings for members choosing this option.

### Benefits of the Rule

Every member of the ESP and CLEAN programs must develop and follow an environmental management system (EMS) that includes identifying, controlling, and monitoring activities that impact the environment. The EMS integrates environmental responsibilities into everyday business decision-making leading to a proactive approach to environmental management rather than a reactive one. An effective EMS helps an organization to avoid, reduce, or control the adverse environmental impacts of its activities, products, and services, achieve compliance with applicable legal requirements, and assist in continually improving environmental performance. Organizations with an effective EMS also realize increases in operational efficiency and decreased costs, making them a better, cleaner, more stable employer. Since an EMS is site-specific, implementation of an EMS is practical and useful for organizations of all types and sizes.

ESP and CLEAN program members are entities with exemplary environmental records. In order to allow these high performers to focus their resources on environmental improvements,

program membership offers operational flexibility. Member entities may apply their limited staff time to environmental performance rather than routine reporting activities. IDEM staff time is also freed from routine inspection of program members and can then be applied to dischargers with compliance problems. This allows more strategically targeted resource allocations by members of the programs and IDEM to produce better overall environmental results.

### **Description of the Rulemaking Project**

The ESP and CLEAN are voluntary programs; therefore, rulemaking is not necessary to initiate the programs. IDEM has chosen to pursue a rulemaking pertaining to each of the regulatory programs (air, water, and solid and hazardous waste) to establish these programs based on IC 13-27-8-3. This rulemaking will provide consistency and clarity for the programs and an opportunity for public input on the programs and the regulatory incentives. This rulemaking is conducted under IC 13-14-9 and follows the steps as described under the heading, Rulemaking Process. Numerous public meetings have been held to discuss the intent and details of the ESP and CLEAN programs, but no workgroup is planned for this rulemaking.

### **Scheduled Hearings**

First Public Hearing: September 19, 2006.

Second Public Hearing: January 16, 2007, at 1:30 p.m., at the board meeting held at Indiana Government Center South, Conference Center Room A.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or

reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

- (A) human, plant, animal, or aquatic life; or
- (B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

NEPT is a federal, voluntary partnership program that recognizes and rewards companies that consistently exceed regulatory requirements, work closely with their communities, and excel in protecting the environment and public health. NEPT is based on the premise that government should complement existing programs with new tools and strategies that not only protect people and the environment but also capture opportunities for reducing cost and spurring technological innovation. U.S. EPA provides exclusive regulatory and administrative benefits to NEPT members, including placing them at low priority for routine inspections, and offers public recognition, networking opportunities, and other benefits. To qualify for NEPT, applicants must have adopted and implemented an EMS, show evidence of specific past environmental achievements, have a history of sustained compliance with environmental requirements, commit to continued environmental improvement, and commit to public outreach and performance reporting.

Though IDEM has worked towards and continues to strive for consistency with the federal program, the ESP and CLEAN programs have some differences from the NEPT program on some program elements. IDEM desires to develop a program that encourages organizations to take that next step in the evolution of their environmental management responsibilities from compliance driven to beyond compliance and continuous environmental improvement. IDEM has reviewed and incorporated many elements from other state performance based programs and has also considered the nature of Indiana's natural and regulatory environment, yielding a program unique to Indiana.

Unlike the NEPT program that requires applicants to report results from two (2) past environmental achievements, the state program does not require applicants to report on past achievements. IDEM feels that allowing entities to become program members while they are in the early stages of

developing a proactive environmental management system will provide support for further improvements and can provide the impetus for senior management to see the value in progressive environmental management.

ESP and CLEAN requirements for future environmental achievements differ from the NEPT requirements. NEPT applicants must identify four (4) environmental performance commitments in their initial and renewal applications. ESP applicants must identify one (1) environmental improvement initiative in their initial application and one (1) environmental improvement initiative in each annual summary as long as the member continues to maintain membership in the program. CLEAN applicants must identify five (5) environmental improvement initiatives for the three-year membership. IDEM is electing to require three (3) initiatives for ESP rather than four (4) in order to enable the member to focus more resources on attaining the initiatives and producing measurable results. IDEM feels that requiring three (3) initiatives will lead to better progress towards the goals of the initiatives and increased resource allocation by the member toward each initiative.

The EMS requirements in the federal and state programs are very similar because they are based on the ISO 14001 basic elements. Both programs require an independent audit of the EMS prior to becoming a member. Independent audits are conducted by parties not directly employed at the location being audited and not directly involved in developing the EMS being audited. The NEPT program requires that before an interested entity may be accepted into the program, its EMS must complete one (1) full cycle (plan-do-check-act). The ESP and CLEAN programs will require that members have an EMS developed and implemented (plan-do) and that the program member demonstrates that the cycle continues via the annual summary mechanism.

The NEPT program identifies community outreach as a separate component of the membership eligibility criteria. The NEPT community outreach component requires identifying and responding to community concerns, informing the community of important matters that affect it, and reporting on the facility's EMS and performance commitments. IDEM feels that these are appropriate community outreach requirements. However, IDEM feels that these elements can be appropriately addressed by

the entity's environmental management system. Therefore, IDEM is requiring the same community outreach requirements as a required element of the applicant's environmental management system, providing an annual review mechanism of this important component of the program.

### **Rulemaking Process**

The first step in the rulemaking process is a first notice published in the Indiana Register. This includes a discussion of issues and opens a first comment period. The first notice published on September 1, 2005, discussed the intention to create an ESP program in Indiana. Subsequent to the publication of that first notice, IDEM identified another state program, the CLEAN program, and published a continuation of first notice on April 1, 2006, to include the CLEAN program into the rulemaking. The second notice is then published which contains the comments and the department's responses to comments from the first comment period and the draft rule. A notice of first meeting/hearing is also published in the Indiana Register. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule, also known as the draft rule as preliminarily adopted, is published in the Indiana Register after preliminary adoption. A notice of second meeting/hearing is also published in the Indiana Register. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the publisher.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Steve Mojonier, Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or (800) 451-6027 (in Indiana). Information on the Environmental Stewardship and CLEAN programs is available from Karen Peterson, Office of Pollution Prevention and Technical Assistance, at (317) 233-5555 or (800) 988-7901 (in Indiana).